

STATE OF MICHIGAN
COURT OF APPEALS

JAY S. TURNER,

Plaintiff-Appellant,

v

J & J SLAVIK, INC.,

Defendant-Appellee.

UNPUBLISHED

May 10, 2012

No. 303243

Oakland Circuit Court

LC No. 2007-082782-CZ

Before: MURPHY, C.J., and STEPHENS and RIORDAN, JJ.

PER CURIAM.

Plaintiff brought this action seeking a declaratory judgment that he was still a shareholder and alleging various violations of the Michigan Business Corporation Act (MBCA), MCL 450.1101 *et seq.* After a bench trial, the trial court issued an opinion and order that found plaintiff's actions were barred by the residual six-year statute of limitations found in MCL 600.5813. Plaintiff appeals as of right. We reverse and remand.

It is undisputed that plaintiff simultaneously acquired a 25 percent interest in defendant when he entered into an employment agreement to become its President and CEO. The parties also entered into a redemption agreement that required defendant to redeem plaintiff's shares upon termination of his employment at a fair market value and allowed either party to seek specific performance if the agreement was breached. Plaintiff's employment was terminated in January 1992; however, it is unclear whether plaintiff is still a shareholder today. He contends that his shares have never been redeemed because defendant was prohibited from doing so under the MBCA. Defendant asserts that the shares were automatically redeemed because the shares were worthless.

On appeal, the sole issue is whether the statute of limitations bars plaintiff's claim that he is a shareholder. We review a trial court's factual findings from a bench trial for clear error. *Trader v Comerica Bank*, 293 Mich App 210, 215; 809 NW2d 429 (2011). Whether an action is barred by the statute of limitations involves a question of law, which we review de novo. *Ins Comm'r v Aageson Thibo Agency*, 226 Mich App 336, 340-341; 573 NW2d 637 (1997).

"The statute of limitations is a procedural device designed to promote judicial economy and protect defendants' rights." *Brennan v Edward D. Jones & Co*, 245 Mich App 156, 157; 626 NW2d 917 (2001). Under MCL 600.5827, the limitation period generally begins to run when wrong was done, not when the damage results. For claims based on the MBCA, the limitation

period is six years. *Estes v Idea Engineering & Fabrications, Inc*, 250 Mich App 270, 285; 649 NW2d 84 (2002). Although a declaratory judgment cannot be used to avoid the statute of limitations for substantive relief, there is no statute of limitations that limits the time period in which declaratory relief must be sought. *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119, 159; 537 NW2d 596 (1995).

In *Taxpayers Allied for Constitutional Taxation*, 450 Mich at 120, the plaintiff alleged that a tax adopted in 1981 violated the Headlee Amendment. The trial court incorrectly concluded that plaintiff's claim was barred by the statute of limitations because it was not filed within one year of when the tax increase went into effect. *Id.* at 121-122. Our Supreme Court reasoned that the plaintiff's claim essentially consisted of two actual controversies: (1) whether the plaintiff could obtain a refund for taxes that had been paid in the past, and (2) whether the increased tax had to be paid in the future. *Id.* at 129. The first controversy was barred because it would provide substantive relief for a claim that was otherwise barred by the statute of limitations. *Id.* However, the future aspect of plaintiff's claim was not barred because it is possible to obtain injunctive relief to prevent future damages. *Id.*

Similarly, in this case, there are two actual controversies within plaintiff's claim: (1) defendant's alleged past violations of the MBCA, and (2) future violations that will allegedly occur absent a declaratory judgment. Although plaintiff is barred from obtaining substantive relief for any past violations, he may be able to obtain injunctive relief to prevent future violations if the trial court determines that he is still a shareholder. Accordingly, the trial court erred when it found that plaintiff's entire claim was barred by the statute of limitations.

Defendant presented five additional defenses for our consideration that it contends would bar plaintiff's claims. However, these issues have not been decided by the trial court, so we decline to address them. Defendant is free to raise these defenses on remand.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Cynthia Diane Stephens
/s/ Michael J. Riordan